



**BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH
Goods and Service Tax**

D. No. 5-56, Block-B, R.K. Spring Valley Apartments, Edupugallu, Vijayawada-521151

Present

1. Sri. D. Ramesh, Additional Commissioner of State Tax (Member)
2. Sri. M. Sreekanth, Joint Commissioner of Central tax (Member)

AAR No.33/AP/GST/2019 dated: 31.10.2019

1	Name and address of the applicant	M/s GVS projects Private limited., 54-13-360, Flat No.102, 7 th Road, Srinivasanagar Bank Colony, Gunadala, Vijayawada- 520008, Andhra Pradesh.
2	GSTIN	37AABCG9813H1ZH
3	Date of filing of Form GST ARA-01	15.07.2019
4	Date of Personal Hearing	18.09.2019
5	Represented by	Sri M. Ramachandra Murthy, Authorized representative
6	Jurisdictional Authority – State	Assistant Commissioner (ST), Auto Nagar Circle, Vijayawada.
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	b) applicability of a notification issued under the provisions of this Act; and e) determination of the liability to pay tax on any goods or services or both;

PROCEEDINGS

(Under sub-section (4) of Section 98 of Central Goods and Services Tax Act, 2017 and sub- section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by M/s GVS Projects Private Limited.,(hereinafter referred to as applicant), registered under the Goods & Services Tax.
2. The provisions of the CGST Act and APGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the



APGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or AP GST Act would be mentioned as being under the GST Act.

3. Brief Facts of the case:

M/s GVS Projects Private Limited, Gunadala, Vijayawada, (hereinafter referred to as the Applicant) is engaged in electrification work.

1) The applicant entered in to contract with APEPDCL relating to "Supply and erection of 11No.s 33/11KV Indoor Sub stations and their connected lines in Z2 Division of Visakhapatnam circle on turkey basis." at a cost of Rs. 36,75,05,848/- (including tax).

2) The applicant entered in to contract with APEPDCL relating to Supply and Erection of 33KV Inter linking lines in Srikakulam, Vizag and Vizianagaram District Turnkey Basis at cost Rs.42,57,43,955/-(including tax).

3) The applicant entered in to contract with APSPDCL relating to "System improvement project works for erection of 2 no.s 33/11kv GIS indoor sub stations at Vijayawada and 1 no. at 33/11kv GIS Indoor Sub-station at Guntur and their connected lines on semi turkey basis under IPDS Scheme" at cost of Rs.26,94,00,440/- (including tax).

The applicant had filed an application in form GST ARA-01, Dated 15.07.2019, by paying required amount of fee for seeking Advance Ruling on the following issues, as mentioned below

4. Questions raised before the Authority:

The applicant seeks advance ruling on the following;

1. Whether APSPDCL & APEPDCL is a Government authority/ Government Entity or not?
2. What is the applicable rate of GST on work agreement entered into with the APSPDCL & APEPDCL as mentioned in the Annexures.

Broad scope of work:- "Supply and erection of 11No's 33/11KV Indoor Sub stations and their connected lines in Z2 division of Visakhapatnam circle on turnkey basis" & "Supply and erection of 33KV Inter linking lines in Srikakulam, Vizag and Vizianagaram Dists Turnkey Basis" & "System improvement project works for erection of 2 no.s 33/11kv GIS indoor Sub Stations at Vijayawada and 1 no. at 33/11kv GIS indoor Sub Station at Guntur and their connected lines on semi turnkey basis under IPDS Scheme".

3. Under which Notification the work would fall, for discharging the GST liability?
4. Whether for the value of materials recovered from RA bills issued on cost recovery basis by APSPDCL & APEPDCL is liable to tax under RCM as per Notification No.13/2017 Central Tax (Rate) dated 28.06.2017 or not ?



On Verification of basic information of the applicant, it is observed that the applicant falls under State jurisdiction, i.e. Assistant Commissioner, Auto Nagar Circle of Vijayawada. Accordingly, the application has been forwarded to the respective Tax Authorities of State and Centre to offer their remarks as per the Sec. 98(1) of CGST /APGST Act 2017.

In response, no remarks are received from the jurisdictional officers concerned regarding whether there are any proceedings lying pending or passed relating to the applicant on the issue, for which the Advance Ruling sought by the applicant.

5. Record of Personal Hearing:

Sri M. Ramachandra Murthy, the authorized representative of the applicant appeared for Personal Hearing on 18.09.2019 and they reiterated the submission already made in the application.

6. Applicants Interpretation of Law and Facts:

The applicant submits that as per the Definition in section 2(119) of the CGST Act, 2017 “works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

As per Schedule II of the GST Act, 2017 and para 6(a), works contract shall be treated as “supply of service” as defined in clause (119) of section 2.

As per Notification No. 31/2017 - Central Tax (Rate) dated 13th Oct, 2017 “Governmental Authority” means an authority or a board or any other body, -

- (i) setup by an Act of Parliament or a State Legislature; or
- (ii) established by any Government, with 90 per cent or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243 W of the Constitution or to a Panchayat under article 243 G of the Constitution. |

“Government Entity” means an authority or a board or any other body including a society, trust, corporation,

- i) set up by an Act of Parliament or State Legislature;
- ii) established by any Government, with 90 percent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.”



The applicant further submits that at present 18% GST is being adopted on works contract services providing to APSPDCL in the state of Andhra Pradesh as the work agreed is not falling under any specific nature of work mentioned in Notification no. 11/2017 of Central Tax - Rate modified from time to time.

7. Discussion and Findings:

We have examined the issues raised in the application. The taxability, classification of the services, applicable rate of tax etc., for the goods and services supplied or to be supplied, as governed under the provisions of respective GST Acts are examined.

The Government of India vide Notification No.11/2017 - Central Tax (Rate), dated: 28th June 2017 notified the rate of GST applicable on supply of services. Under this notification for heading 9954 the applicable rate of GST is 9%.The said notification has been amended from time to time and till date five notifications are issued by the Government of India and the said amendment Notifications are as follows:

- 1) Notification No. - 20/2017 Central Tax (Rate), Dated - 22/08/2017.
- 2) Notification No. - 24/2017 Central Tax (Rate), Dated - 21/09/2017.
- 3) Notification No. - 31/2017 Central Tax (Rate), Dated - 13/10/2017.
- 4) Notification No. - 46/2017 Central Tax (Rate), Dated - 14/11/2017.
- 5) Notification No. - 01/2018 Central Tax (Rate), Dated - 25/01/2018.

Vide notification No. 24/2017 - Central Tax (Rate), Dated: 21/09/2017, Government of India by inserting entry No. (VI) Notified concessional GST rate of 6% for the construction services provided to Central Government, State Government, Union Territory, a local authority or a Governmental Authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of

- a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
- b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or
- c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.

Further, vide Notification No. 31/2017 - Central Tax (Rate), Dated -13/10/2017, Government of India substitute the word "Central Government, State Government, Union



Territory, a local authority, a Governmental Authority or a Government Entity" in place of "Central Government, State Government, Union Territory, a local authority or a Governmental Authority".

Now, we examine the question that the Applicant Contractee i.e. M/s APSPDCL /AEPDCL is a Government entity or not. As per Notification No. 31/2017 - Central Tax (Rate), Dated: 13/10/2017 issued under CGST Act, 2017 and corresponding notification under APGST Act, 2017 Government Entity is defined as under.

"Government Entity" means an authority or a board or any other body including a society, trust, corporation,

- i) set up by an Act of Parliament or State Legislature; or
- ii) established by any Government, with 90 percent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.

The Applicant Contractees i.e. APSPDCL and AEPDCL are Government Companies i.e. wholly owned by the Government of Andhra Pradesh. When a copy of Audited Annual Accounts of M/s APSPDCL and AEPDCL are examined, it is evident from the schedule of Equity Share Capital of the Annual Statement that 100% share capital is held by the Government of Andhra Pradesh in the name of Honourable Governor of Andhra Pradesh. Thus, based on the above facts, it is concluded that the Government of Andhra Pradesh is having full control over the APSPDCL and AEPDCL and they are covered under the definition of Government Entities.

Now we discuss the nature of work under taken by the applicant:

The applicant is engaged in the execution of works awarded by M/s. AEPDCL and APSPDCL for 1) Construction of Indoor Sub-station with control Room and all civil works. 2) Electrical Works 3) providing bore well 4) Erection of 33 KV line with 100 Sqmm AAA conductor (DC) 5) Erection of 11 KV line with 100 Sqmm conductor 6) Erection of 33 KV UG cable 7) Erection of 11 KV UG cable. For all the civil works, where materials such as sand, metal, gravel etc., are involved, the rates are inclusive of seigniorage charges as fixed by the Competent Authority of Government of AP and the same will be recovered from the contract bills for remittance to the Government. Materials such as Power Transformers, 100 Sqmm Conductor & Station Transformer will be supplied by department. In some agreements all the materials are in



Contractor's scope. Now the works under discussion have been undertaken to execute/Implement various schemes for constructing sub stations, providing bore wells, erection of lines and required conductors etc. Moreover, the above works undertaken by APSPDCL and APEPDCL are for business purpose and the benefit of concessional Rate of 12% (6% under Central tax and 6% State tax) as per notification is NOT available to the applicant.

As per Section 2 of CGST Act, 2017 and APGST Act, 2017 defines "works contract" as a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

The composite supply of works contract as defined at Section 2 of CGST Act, 2017 and APGST Act, 2017 is treated as supply of service in terms of serial no.6, Schedule II of CGST Act, 2017 and APGST Act, 2017.

In the instant case, the contract entered by the applicant falls under the works contract and falls under entry no. (ii) of S.No.3 of the table of Notification No.11/2017 - Central Tax (Rate), Dated: 28th June 2017 as amended from time to time and corresponding notifications under APGST Act, 2017, and the applicable rate of tax is 18% (9% under Central tax and 9% State tax).

The applicant stated that they are receiving materials such as Power Transformers, 100 Sqmm Conductor & Station Transformer from the Contractee and the value of such materials is recovered from their RA bills issued on cost recovery basis by the Contractee. The applicant posed a question whether RCM as per Notification No.13/2017 Central Tax Rate dated: 28.06.2017 is applicable or not on these cost recoveries. As seen from the said Notification, reverse charge is not applicable to the goods issued by a Contractee. However, the provisions of Section 15(2)(b) of CGST Act, 2017 which as follows, attract in such situations.

"Section 15(2)(b) : any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;"

Since APSPDCL and APEPDCL being the Contractees are recovering the cost of the materials that are used/consumed in the services provided to them by the applicant from the R.A.Bills issued, such cost recovered is to be included in the taxable value of the supply.



RULING

(Under section 98 of Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017)

The Applicant is not entitled for the benefit of concessional rate of GST @12% (6% under Central tax and 6% State tax) in terms of Notification No.24/2017-Central Tax (Rate) dated:21.09.2017 read with Notification No.31/2017-Central Tax (Rate) dated:13.10.2017.


The applicable rate of tax is 18% (9% under Central tax and 9% State tax) for the services referred by the Applicant as per entry no. (ii) of S.No.3 of the table of Notification No.11/2017 - Central Tax (Rate), Dated: 28th June 2017.

The value of materials recovered on cost recovery basis by the Contractees from the R.A. bills issued by the applicant is includible in the taxable value of supply in terms of Section 15(2)(b) of the CGST Act, 2017.

**Sd/-D. RAMESH
(MEMBER)**

**Sd/- M.SREEKANTH
(MEMBER)**

//t.c.f.b.o//


Assistant Commissioner (ST)
Assistant Commissioner (State Tax)
O/o. Chief Commissioner of State Tax,
Andhra Pradesh, Vijayawada.

TO

1. M/s GVS projects Private limited., 54-13-360, Flat No.102, 7th Road, Srinivasanagar Bank Colony, Gunadala, Vijayawada, Andhra Pradesh – 520008 **(By Registered Post)**

Copy to

1. The Assistant Commissioner of State Tax, Auto Nagar Circle, Vijayawada Division. **(By Registered Post)**
2. The Superintendent, Central Tax, Benz Circle Range, Vijayawada CGST Division. **(By Registered Post)**

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Eedupugallu, Vijayawada.



2. The Chief Commissioner (Central Tax), O/o Chief Commissioner of Central tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035. **(By Registered Post)**

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, with in a period of 30 days from the date of service of this order.

